



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2009-0648; FRL – 9728-7]

Approval and Promulgation of Implementation Plans; New Mexico;

**Albuquerque/Bernalillo County: Infrastructure and Interstate Transport Requirements
for the 1997 and 2008 Ozone and the 1997 and 2006 PM_{2.5} NAAQS**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving submittals from the Governor of New Mexico for the City of Albuquerque/Bernalillo County area, pursuant to the Clean Air Act (CAA or the Act). These submittals address the infrastructure elements specified in the CAA necessary to implement, maintain, and enforce the 1997 and 2008 8-hour ozone and the 1997 and 2006 fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS or standards). We find that the current Albuquerque/Bernalillo County State Implementation Plan (SIP) meets the infrastructure elements for the 1997 and 2008 8-hour ozone NAAQS and the 1997 and 2006 PM_{2.5} NAAQS. We also find that the current Albuquerque/Bernalillo County SIP meets the CAA requirement that emissions from sources in the area do not interfere with prevention of significant deterioration (PSD) measures required in the SIP of any other state, with regard to the 1997 and 2008 ozone and 1997 and 2006 PM_{2.5} NAAQS. EPA is also approving SIP revisions that modify the PSD SIP to include nitrogen oxides (NO_x) as an ozone precursor. EPA is approving revisions

to the Albuquerque/Bernalillo County PSD SIP that identify the PM_{2.5} precursors and establish significant emission rates for said precursors, consistent with the federal requirements. We are also approving other revisions to the Albuquerque/Bernalillo County PSD SIP to maintain consistency with the federal PSD permitting requirements. In addition to these revisions, EPA is approving other revisions to the Albuquerque/Bernalillo County SIP necessary to implement the NAAQS.

DATES: This final rule is effective on **[Insert date 30 days from date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R06-OAR-2009-0648. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a fee of 15 cents per page for making photocopies of documents. On the day of the visit,

please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection during official business hours, by appointment, at the City of Albuquerque, Environmental Health Department – Air Quality Division, One Civic Plaza, Room 3047, Albuquerque, New Mexico 87103, telephone 505-768-1972, e-mail address *aqd@cabq.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. John Walser, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone 214-665-7128; fax number 214-665-6762; e-mail address *walser.john@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” means EPA.

Table of Contents

I. Background

- a. Section 110(a)(1) and (2)*
- b. PSD Requirements*
- c. Additional SIP Revisions*

II. Final Action

III. Statutory and Executive Order Reviews

I. Background

a. Section 110(a)(1) and (2)

The background for today's action is discussed in detail in our April 13, 2012 proposal (76 FR 22249). In that notice we proposed to approve submittals from Albuquerque/Bernalillo County that address the infrastructure elements specified in the CAA section 110(a)(2), necessary to implement, maintain, and enforce the 1997 and 2008 ozone and the 1997 and 2006 PM_{2.5} standards. Those submittals are dated May 24, 2006 and August 16, 2010. We proposed to find that the following section 110(a)(2) elements are contained in the current Albuquerque/Bernalillo County SIP and provide the infrastructure for implementing the 1997 and 2008 ozone and the 1997 and 2006 PM_{2.5} standards: emission limits and other control measures (section 110(a)(2)(A)); ambient air quality monitoring/data system (section 110(a)(2)(B)); the program for enforcement of control measures (section 110(a)(2)(C)); international and interstate pollution abatement (section 110(a)(2)(D)(ii)); adequate resources (section 110(a)(2)(E)); stationary source monitoring system (section 110(a)(2)(F)); emergency power (section 110(a)(2)(G)); future SIP revisions (section 110(a)(2)(H)); consultation with government officials (section 110(a)(2)(J)); public notification (section 110(a)(2)(J)); PSD and visibility protection (section 110(a)(2)(J)); air quality modeling/data (section 110(a)(2)(K)); permitting fees (section 110(a)(2)(L)); and consultation/participation by affected local entities (section 110(a)(2)(M)).

In addition, we proposed to find that Albuquerque/Bernalillo County has adequately addressed one of the four required elements (or prongs) of CAA section 110(a)(2)(D)(i), the element which requires that the SIP prohibit air emissions from sources within a state from

interfering with measures required to prevent significant deterioration of air quality in any other state. We are determining that emissions from sources in Albuquerque/Bernalillo County do not interfere with measures to prevent significant deterioration of air quality in any other state for the 1997 and 2008 ozone and the 1997 and 2006 PM_{2.5} NAAQS (CAA section 110(a)(2)(D)(i)(II)).

b. PSD Requirements

In conjunction with our proposed finding that the Albuquerque/Bernalillo County SIP meets the section 110(a)(1) and (2) infrastructure and interstate transport SIP elements previously listed for the four NAAQS, we proposed to approve portions of two SIP revisions submitted by the Governor of New Mexico to EPA on May 24, 2006 and August 16, 2010 to the Albuquerque PSD Permitting Program at 20.11.61 NMAC. These revisions identify NO_x as a precursor to ozone, identify the precursors for PM_{2.5} and the applicable significant emission rates for PM_{2.5} PSD permitting, and make other necessary updates to maintain consistency with the federal PSD permitting requirements at 40 CFR 51.166 and 40 CFR Part 51, Appendix W. EPA believes that these PSD revisions, taken together with the PSD SIP and the interstate transport SIP, satisfies the PSD-related requirements of 110(a)(2)(C), 110(a)(2)(J), and the element of section 110(a)(2)(D)(i) which requires that the SIP prohibit air emissions from sources within a state from interfering with measures required to prevent significant deterioration of air quality in any other state.

c. Additional SIP Revisions

EPA also proposed to approve a portion of a SIP revision submitted on November 6, 2009 revising the Albuquerque/Bernalillo County SIP for Ambient Air Quality Standards, codified at 20.11.8 NMAC (Part 8). The substantive revisions submitted to Part 8 revise the local ambient air quality standards to make them consistent with the current NAAQS.

Our April 13, 2012 proposal provides a detailed description of all relevant submittals and the rationale for EPA's proposed actions, together with a discussion of the opportunity to comment. The public comment period for these actions closed on May 14, 2012, and we did not receive any adverse comments.

II. Final Action

We are approving the submittals provided to demonstrate that the Albuquerque/Bernalillo County SIP meets the infrastructure elements for the 1997 and 2008 ozone and 1997 and 2006 PM_{2.5} NAAQS listed below:

Emission limits and other control measures (110(a)(2)(A) of the Act);

Ambient air quality monitoring/data system (110(a)(2)(B) of the Act);

Program for enforcement of control measures (110(a)(2)(C) of the Act);

Interstate transport, pursuant to section 110(a)(2)(D)(ii) of the Act;

Adequate resources (110(a)(2)(E) of the Act);

Stationary source monitoring system (110(a)(2)(F) of the Act);

Emergency power (110(a)(2)(G) of the Act);

Future SIP revisions (110(a)(2)(H) of the Act);

Consultation with government officials (110(a)(2)(J) of the Act);

Public notification (110(a)(2)(J) of the Act);

Prevention of significant deterioration and visibility protection (110(a)(2)(J) of the Act);

Air quality modeling data (110(a)(2)(K) of the Act);

Permitting fees (110(a)(2)(L) of the Act); and

Consultation/participation by affected local entities (110(a)(2)(M) of the Act).

We are approving the portion of the Albuquerque/Bernalillo County SIP revision submittal that addresses the requirement of section 110(a)(2)(D)(i)(II) of the Act that emissions from sources in Albuquerque/Bernalillo County do not interfere with measures required in the SIP of any other state under part C of the Act regarding PSD for the 1997 and 2008 8-hour ozone and 1997 and 2006 PM_{2.5} NAAQS.

We are approving Albuquerque/Bernalillo County PSD SIP provisions to 20.11.61 NMAC submitted May 24, 2006 and August 16, 2010. These SIP revisions address NO_x as a precursor for ozone, consistent with EPA's November 29, 2005 Phase 2 rule for the 1997 ozone NAAQS (70 FR 71612). These revisions also identify the precursors for PM_{2.5} and significant emission rates necessary for PM_{2.5} PSD permitting, consistent with EPA's 2008 PM_{2.5} NSR rule for the 1997 and 2006 PM_{2.5} NAAQS (73 FR 28321, May 16, 2008). Additionally, the May 24, 2006 and August 16, 2010 submittals make numerous other changes necessary to maintain consistency with the federal PSD permitting requirements. Specifically, we are approving revisions to 20.11.61.7, 20.11.61.28, and 20.11.61.29 NMAC submitted on May 24, 2006. We are also approving revisions to 20.11.61.1, 20.11.61.2, 20.11.61.7, 20.11.61.11, 20.11.61.12, 20.11.61.14, 20.11.61.15, 20.11.61.16, 20.11.61.17, 20.11.61.18, 20.11.61.19, 20.11.61.20, 20.11.61.21, 20.11.61.23, 20.11.61.24, 20.11.61.25, 20.11.61.26, 20.11.61.27, 20.11.61.28, 20.11.61.29, 20.11.61.30, and 20.11.61.31 NMAC submitted on August 16, 2010.

We are also approving SIP revisions from November 6, 2009 pertaining to updating Part 8 Ambient Air Quality Standards (20.11.8 NMAC). EPA is approving these revisions pursuant to section 110 of the CAA. These revisions improve the Albuquerque/Bernalillo County SIP and update 20.11.8 NMAC to add new standards and revise existing NAAQS in 20.11.8 NMAC to

be consistent with 40 CFR Part 50 – National Primary and Secondary Ambient Air Quality Standards.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days**

from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements.

(See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 5, 2012.

Samuel Coleman, P.E.,
Acting Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

Part 52-[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart GG-New Mexico

2. Amend § 52.1620 by:
 - a. Amending the second table in paragraph (c) entitled “EPA Approved Albuquerque/Bernalillo County, NM Regulations” as follows:
 - i. Revising the entry for Part 8 (20.11.8 NMAC) under the heading “New Mexico Administrative Code (NMAC) Title 20—Environment Protection, Chapter 11—Albuquerque/Bernalillo County Air Quality Control Board”; and
 - ii. Revising the entry for Part 61 (20.11.61 NMAC) under the heading “New Mexico Administrative Code (NMAC) Title 20—Environment Protection, Chapter 11—Albuquerque/Bernalillo County Air Quality Control Board”.
 - b. Amending the second table in paragraph (e) entitled “EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP” by adding a new entry for “Infrastructure and Interstate Transport for the 1997 and 2008 Ozone and the 1997 and 2006 PM_{2.5} NAAQS” at the end of the table.

The additions and revisions read as follows:

§ 52.1620 Identification of plan.

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(c) * * *

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EPA Approved Albuquerque/Bernalillo County, NM Regulations

State citation	Title/subject	State approval/effective date	EPA approval date	Explanation
New Mexico Administrative Code (NMAC) Title 20—Environment Protection, Chapter 11—Albuquerque/Bernalillo County Air Quality Control Board				
* * * * *				
Part 8 (20.11.8 NMAC)	Ambient Air Quality Standards	8/12/2009	[Insert Date of FR publication], [Insert FR page number where document begins]	
* * * * *				
Part 61 (20.11.61 NMAC)	Prevention of Significant Deterioration	1/10/2011	[Insert Date of FR publication], [Insert FR page number where document begins]	
* * * * *				

(e) * * *

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EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP

Name of SIP provision	Applicable geographic or	State submittal/effective	EPA approval date	Explanation
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	nonattainment area	date		
* * * * *				
Infrastructure and Interstate Transport regarding noninterference with other states' programs for PSD for the 1997 and 2008 Ozone and the 1997 and 2006 PM _{2.5} NAAQS	Bernalillo County	8/16/2010	[Insert Date of FR publication], [Insert FR page number where document begins].	Approval for 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M)

3. Amend § 52.1634 by revising paragraph (c) to read as follows:

§ 52.1634 Significant deterioration of air quality.

* * * * *

(c) The plan submitted by the Governor in paragraph (a) of this section for Prevention of Significant Deterioration is not applicable to Bernalillo County. Therefore, the following plan described below is applicable to sources located within the boundaries of Bernalillo County (including the City of Albuquerque). This plan, submitted by the Governor of New Mexico on April 14, 1989, August 7, 1989, May 1, 1990, May 17, 1993, May 24, 2006, August 16, 2010, and December 15, 2010 and respectively adopted on March 8, 1989, July 12, 1989, April 11, 1990, February 10, 1993, December 22, 2005, April 13, 2006, July 28, 2010, and December 10, 2010, by the Albuquerque/Bernalillo County Air Quality Control Board, containing Part 61–Prevention of Significant Deterioration is approved as meeting the requirements of part C of the Clean Air Act for the prevention of significant deterioration of air quality.

[FR Doc. 2012-22975 Filed 09/18/2012 at 8:45 am;
Publication Date: 09/19/2012]